REMARKS

Claim 25 has been canceled. Claims 1, 3, 8, 11, 13, 15, and 20 have been amended. Claims 1 through 24 remain in the application.

Claims 8 and 20 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any necessary supporting intervening claims.

Accordingly, claims 8 and 20 have been amended and rewritten in independent form to include the limitations of the base claim and any necessary supporting intervening claims. It is respectfully submitted that claims 8 and 20 are in a condition for allowance, which allowance is solicited.

Claims 1 through 7, 9, 10, 12 through 19, 21, 22, 24, and 25 were rejected under 35 U.S.C. § 102(b) as being anticipated by Genord, Jr. et al. (U.S. Patent No. 4,580,821). Claim 25 has been canceled and the rejection as to this claim is now moot. However, Applicants respectfully traverse this rejection as it applies to claims 1 through 7, 9, 10, 12 through 19, 21, 22, and 24.

U.S. Patent No. 4,580,821 to Genord, Jr. et al. discloses a vehicle body door handle assembly. A door handle assembly 52 is mounted to a flange 46 and includes a mounting and cover member 54 which covers this flange and is adjustably secured thereto as well as an operating handle 56 which is pivotally mounted to the mounting member 54 and operatively connected to a vehicle body door lock mounted within a lower portion of a door between inner and outer panels 18 and 20. The member 54 includes an integral housing 64 which includes an inner wall 66 and a side or peripheral wall 68 having an upper portion 70, forward portion 72 and lower portion 74 which join the inner wall to the member 54. The

member 54 is secured to the flange 46 both above and below the cutout 50. The handle 56 is generally of the size of the open outer wall of the housing 64 and includes a pair of integral depending legs 96 and 98, the former of which is longer than the latter. The legs are coaxially apertured at 100. As shown in FIGS. 3 and 4, the legs fit within the slots 78 so as to be located inwardly of the member 54 and straddle integral coaxially apertured legs 102 and 104 of the member 54. A headed pin 106 extends through the apertures 100 and those of the legs 102 and 104 to pivotally mount the handle 56 to the member 54 for movement between an inoperative position within the outer open wall of housing 64, as shown in FIGS. 1 and 3, and an operative position as shown in dash lines in FIG. 3 wherein the handle 56 has been pulled outwardly of the outer open wall of the housing 64. A coil torsion spring 108 surrounds the pin 106 between the legs 102 and 104 and has one leg 110 thereof engaging an integral cylindrical boss 112, FIG. 4, of the member 54 and the other bent leg thereof engaging an extension 114 of leg 98 of the handle 56 to bias the handle inwardly of the housing 64 or clockwise as viewed in FIG. 3 to inoperative position. Genord, Jr. et al. does not disclose at least one spring operatively cooperating with a handle housing and a door handle to allow an operator to push the door handle inwardly relative to an exterior surface of a door and to release the door handle to move the door handle to a position outwardly relative to the exterior surface of the door.

In contradistinction, claim 1, as amended, clarifies the invention claimed as an exterior door handle assembly for a vehicle including a handle housing operatively supported by a door of the vehicle. The exterior door handle assembly also includes a door handle pivotally supported by the handle housing to be flush with an exterior surface of the door. The exterior door handle assembly further includes at least one spring operatively cooperating with the handle

housing and the door handle to allow an operator to push the door handle inwardly relative to the exterior surface of the door and to release the door handle to move the door handle to a position outwardly relative to the exterior surface of the door. Claim 13 has been amended similar to claim 1 and is directed to a door assembly with the exterior door handle assembly having a plurality of springs.

A rejection grounded on anticipation under 35 U.S.C. § 102 is proper only where the subject matter claimed is identically disclosed or described in a reference. In other words, anticipation requires the presence of a single prior art reference which discloses each and every element of the claimed invention arranged as in the claim. In re Arkley, 455 F.2d 586, 172 U.S.P.Q. 524 (C.C.P.A. 1972); Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481 (Fed. Cir. 1984).

Genord, Jr. et al. '821 does not disclose or anticipate the present invention of claims 1 and 13. Specifically, Genord, Jr. et al. '821 merely discloses a vehicle door handle assembly having an operating handle which is pivotally mounted to a mounting member and operatively connected to a vehicle body door lock. Genord, Jr. et al. '821 lacks at least one spring operatively cooperating with a handle housing and a door handle to allow an operator to push the door handle inwardly relative to an exterior surface of a door and to release the door handle to move the door handle to a position outwardly relative to the exterior surface of the door. In Genord, Jr. et al. '821, the operator inserts their fingers into the housing 64 behind the handle 56 and the handle 56 is then pulled outwardly of the housing 64 against the bias of spring 108 and the spring 108 does not allow an operator to push the door handle inwardly relative to an exterior surface of a door and to release the door handle to move the

door handle to a position outwardly relative to the exterior surface of the door.

Genord, Jr. et al. '821 fails to disclose the combination of an exterior door handle assembly for a vehicle including a handle housing operatively supported by a door of the vehicle, a door handle pivotally supported by the handle housing to be flush with an exterior surface of the door, and at least one spring operatively cooperating with the handle housing and the door handle to allow an operator to push the door handle inwardly relative to the exterior surface of the door and to release the door handle to move the door handle to a position outwardly relative to the exterior surface of the door as claimed by Applicants. Therefore, it is respectfully submitted that claims 1 and 13 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 102(b).

Claims 1 through 7, 9 through 19, and 21 through 25 were rejected under 35 U.S.C. § 103 as being unpatentable over Ogasawara et al. (U.S. Patent No. 4,907,833). Claim 25 has been canceled and the rejection as to this claim is now moot. However, Applicants respectfully traverse this rejection as it applies to claims 1 through 7, 9 through 19, and 21 through 24.

U.S. Patent No. 4,907,833 to Ogasawara et al. discloses an outside handle device for use in a vehicle. A handle 13 is pivotably mounted on a stationary base 11 mounted to a vehicle door (not shown), via a pin 12. A bell-crank 15 is also pivotably mounted to the base 11 via pin 14. The handle 13 includes a lever portion 13a which is initially engaged with one end 15a of the bell-crank 15. The other end 15b of the bell-crank 15 is operatively connected to a door-latching mechanism 20 for latching or unlatching the door. On the pin 12, there is provided a torsion spring 16. One end 16a and the other end 16b of the spring 16 are respectively engaged with the handle 13 and the bell-crank 15. In the base 11, a stopper 28 in the form of a bolt is

threadably driven and is in abutment with the handle 13 in its initial position. Ogasawara et al. does not disclose at least one spring operatively cooperating with a handle housing and a door handle to allow an operator to push the door handle inwardly relative to an exterior surface of a door and to release the door handle to move the door handle to a position outwardly relative to the exterior surface of the door.

In contradistinction, claim 1, as amended, clarifies the invention claimed as an exterior door handle assembly for a vehicle including a handle housing operatively supported by a door of the vehicle. The exterior door handle assembly also includes a door handle pivotally supported by the handle housing to be flush with an exterior surface of the door. The exterior door handle assembly further includes at least one spring operatively cooperating with the handle housing and the door handle to allow an operator to push the door handle inwardly relative to the exterior surface of the door and to release the door handle to move the door handle to a position outwardly relative to the exterior surface of the door. Claim 13 has been amended similar to claim 1 and is directed to a door assembly with the exterior door handle assembly having a plurality of springs.

The United States Court of Appeals for the Federal Circuit (CAFC) has stated in determining the propriety of a rejection under 35 U.S.C. § 103, it is well settled that the obviousness of an invention cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984). The law followed by our court of review and the Board of Patent Appeals and Interferences is that "[a] prima facie case of

obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." In re Rinehart, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976). See also In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984) ("In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.")

Ogasawara et al. '833, either alone or modified, does not teach or suggest the claimed invention of claims 1 and 13. Specifically, Ogasawara et al. '833 merely discloses an outside handle device for use in a vehicle having a handle pivotably mounted on a stationary base mounted to a vehicle door via a pin. Ogasawara et al. '833 lacks at least one spring operatively cooperating with a handle housing and a door handle to allow an operator to push the door handle inwardly relative to an exterior surface of a door and to release the door handle to move the door handle to a position outwardly relative to the exterior surface of the door. In Ogasawara et al. '833, the handle 13 is pivotably mounted on a stationary base 11 mounted to a vehicle door (not shown), via a pin 12 and there is no handle pivotally supported by a handle housing to be flush with an exterior surface of the door and the spring 16 does not allow an operator to push the door handle inwardly relative to an exterior surface of a door and to release the door handle to move the door handle to a position outwardly relative to the exterior surface of the door. As such, there is no motivation or suggestion for modifying Ogasawara et al. '833.

The present invention sets forth a unique and non-obvious combination of an exterior door handle assembly for a vehicle that is flush mounted to an exterior surface of a door

and pops open to actuate the door handle. The references, if combinable, fail to teach or suggest the combination of an exterior door handle assembly for a vehicle including a handle housing operatively supported by a door of the vehicle, a door handle pivotally supported by the handle housing to be flush with an exterior surface of the door, and at least one spring operatively cooperating with the handle housing and the door handle to allow an operator to push the door handle inwardly relative to the exterior surface of the door and to release the door handle to move the door handle to a position outwardly relative to the exterior surface of the door as claimed by Applicants.

Further, the CAFC has held that "[t]he mere fact that prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification". In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). The Examiner has failed to show how the prior art suggested the desirability of modification to achieve Applicants' invention. Thus, the Examiner has failed to establish a case of prima facie obviousness. Therefore, it is respectfully submitted that claims 1 and 13 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 103.

Obviousness under § 103 is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988), and the subjective opinion of the Examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. Since the Examiner has not provided a sufficient factual basis, which is supportive of his/her position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejection of claims 1 through 7, 9 through 19, and 21 through 25 is improper. Therefore, it is respectfully submitted that claims 1 through 7, 9 through 19, and 21 through 24 are allowable over the rejection under 35 U.S.C. § 103.

Based on the above, it is respectfully submitted that the claims are in a condition for allowance, which allowance is solicited. Please charge the additional fees to Deposit Account 07-0960.

Respectfully submitted,

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